

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILLIAM HENSON LEACH)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 93-481
)	
HARRISON COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
DEFENDANT)	

O R D E R

On December 27, 1993, William Henson Leach ("Leach") filed a complaint against Harrison County Rural Electric Cooperative Corporation ("Harrison RECC") alleging he had been improperly billed for electric service. By Order of January 25, 1994, the Commission directed Harrison RECC to either satisfy the matter presented in the complaint or file a written answer within 10 days of the date of the Order. On February 2, 1994, Harrison RECC filed an answer denying any impropriety in its billing of Leach. A hearing was held on the complaint before the Commission on September 28, 1994. At the hearing Leach appeared on his own behalf and Harrison RECC was represented by counsel.

FINDINGS OF FACT

Harrison RECC is a Rural Electric Cooperative that owns, controls, and operates facilities used in the distribution of electricity to the public for compensation. Its principal offices are in Cynthiana, Kentucky. Leach resides at RR #2, Berry,

Kentucky, and is a customer of Harrison RECC. He first became a customer of Harrison RECC at his present address in January 1988.

On July 5, 1993, Leach submitted a meter reading of 14449. On August 3, 1993, he contacted Harrison RECC regarding the meter's alleged failure to register his usage. When Harrison RECC read the meter, it recorded a reading of 03662. The difference between the customer reading and the utility reading of the meter is 89,213 kWh. (After the meter reaches 99999, it rolls over to 00000 and starts again.) Because of the extremely large usage, Harrison RECC removed the meter and it was tested by Harrison RECC and by the Commission's meter personnel. Commission Staff filed a report concerning the meter. All tests showed the meter was performing to standards. Harrison RECC notified Leach of the meter testing results. On September 1, 1993, Harrison RECC rendered a bill for \$6,003.27 to Leach for underbilled service from December 1990 to August 1993, a period of 29 months.

The utility alleged that the Complainant misread his meter for almost three years, i.e. from December 1990, when it was last read by the utility, to August 1993 when the utility read the meter after the Complainant notified it of the meter's failure to record electric usage.

A review of Leach's monthly meter readings prior to December 1990 and subsequent to August 1993 show that his winter and summer consumption typically ranged from 2000 kWh to 3500 kWh. However, between December 1990 and August 1993, his reported consumption typically ranged from 400 to 500 kWh.

The Staff Report, which is part of the record, contends that the utility has violated sections of the Commission's regulations. 807 KAR 5:006, Section 6(5), requires each utility using customer-read meter information to read each meter on its system at least once during the calendar year. Harrison RECC did not read Leach's meter for a period of three years. 807 KAR 5:006, Section 10(3), requires each utility to monitor each customer's usage at least annually to draw the utility's attention to unusual deviations in the customer's usage. Harrison RECC has procedures to identify unusually high or low readings. These procedures did not catch the drastic drop in usage reported by Leach from November 1990 to September 1993.

For the Commission to find that Leach does not owe the amount in question, it must either conclude that Leach read the meter accurately and that his usage was very low or conclude that the meter functioned improperly and the 89,000 kWh measured by it was not used. Based on his historic usage, it is unlikely that usage was as low as reported by Leach. Also, a thorough examination of the actual meter failed to disclose any malfunction.

For the Commission to find in favor of Harrison RECC, it must be shown that Leach misread the meter and failed to report approximately 89,000 kWh of usage over the 29-month period or it must conclude that 89,000 kWh were actually used in one month. Because neither Leach's nor Harrison RECC's circuitry could handle the extreme kWh in question, it is not possible that this amount of electricity was used in one month. Detailed testing showing

Leach's meter to be accurate is the most compelling evidence before the Commission.

CONCLUSIONS OF LAW

Harrison RECC is a utility subject to the regulation of this Commission. As a public utility it is required by KRS 278.160(2) to charge uniform rates for its services. The statute states in pertinent part:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

In Louisville & Nashville Railroad Co. v. Central Iron & Coal Co., 265 U.S. 59 (1924), freight rates were fixed by law in filed tariffs. No contract of a carrier could reduce the amount legally payable, or release from liability a shipper who had assumed an obligation to pay the charges. "Nor could any act or omission of the carrier (except the running of the Statute of Limitations) estop or preclude it from enforcing payment of the full amount by a person liable therefor." Louisville & Nashville Railroad, 265 U.S. at 65. The situation is the same here. Leach cannot be released from liability. By using the services of Harrison, Leach assumed an obligation to pay for those services. By providing services to Leach, Harrison is obligated to enforce payment for those services. Therefore, the complaint should be dismissed and Harrison RECC directed to establish a payment plan in accordance with the Commission's regulations and its published tariff that will allow Leach a reasonable length of time to pay his bill.

The Court of Appeals of Kentucky in Boone County Sand and Gravel Company, Inc. v. Owen County Rural Electric Cooperative Corporation, Ky.App., 779 S.W.2d 224 (1989), upheld a judgement of the Boone Circuit Court which had determined that the defense of equitable estoppel will not bar a utility from collecting for all electricity consumed. In reaching its decision, the circuit court followed the weight of authority from other jurisdictions, which held that statutes which require that public utilities adhere rigidly to rate schedules approved by the public service commission preclude a customer from interposing the defense of equitable estoppel in an action by a utility to collect the balance of charges negligently omitted in earlier billings. Memphis Light, Gas & Water Division v. Auburndale School System, 705 S.W.2d 652 (Tenn.1986); Chesapeake & Potomac Telephone Co. of Virginia v. Bles, 243 S.E.2d 473 (Va. 1978); Haverhill Gas Co. v. Findlen, 258 N.E.2d 294 (Mass. 1970); Wisconsin Power & Light Company v. Berlin Tanning & Manufacturing Co., 83 N.W.2d 147 (Wis. 1957); Corporation De Gastion Ste-Foy v. Florida Power & Light Co., 385 So.2d 124 (Fla.App.1980).

The decision is in accord with Norman v. Pub. Util. Com. of Ohio, 406 N.E.2d 492 (Ohio 1980) where the Ohio Supreme Court held that absent statutory authority the commission cannot limit a utility's practice of backbilling to one year. While KRS 278.225 establishes a two year limit on backbilling, it is not applicable to this case as it did not become effective until July 15, 1994.

While the Commission is loath to see an individual burdened with a utility bill the magnitude of Leach's, there is no legal alternative. The facts of the case show that Leach is being charged an amount which reflects his actual electricity usage for a 29-month period. It is unfortunate that the underbilling occurred, but it must be corrected. KRS 278.160(2) requires a utility to charge uniform rates and prohibits a person from receiving service from a utility for less compensation than that prescribed in its schedules. To allow Leach to avoid paying for the electricity he consumed would violate this statute.

In the future, customers such as Leach will be protected by KRS 278.225. Regrettably, that statute cannot be applied retroactively. The Commission hopes that the payment plan established by Harrison will not place an undue burden on Leach and that such unfortunate incidents will be avoided in the future.

IT IS THEREFORE ORDERED that:

1. The complaint of William Henson Leach against Harrison RECC be and is hereby dismissed.

2. Within 20 days of the date of this Order, Harrison RECC shall establish and file with the Commission a payment plan in accordance with the Commission's regulations and its published tariff which will allow Leach to pay the account.


3. Harrison RECC shall read Leach's meter at least once per year.


4. A proceeding shall be established to require Harrison RECC to show cause why it should not be penalized under KRS 278.990

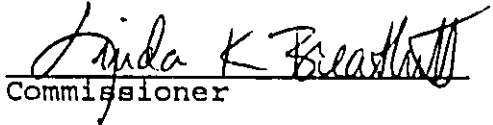
for failure to comply with 807 KAR 5:006, Section 6(5) and 807 KAR 5:006, Section 10(3).

Done at Frankfort, Kentucky, this 31st day of March, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director